

Riback



Comptroller General
of the United States
Washington, D.C. 20548

250196

Decision

Matter of: Consolidated Photo Copy, Inc.--
Reconsideration

File: B-258635.2

Date: June 19, 1995

DECISION

Consolidated Photo Copy, Inc. (CPC) requests reconsideration of our decision (B-258635, January 31, 1995) dismissing its protest against the award of a contract to Fairfax Opportunities Unlimited under request for proposals (RFP) No. EMS-94-R-0003, issued by the United States Department of Agriculture (USDA) for copy center, mail room, and supply room operations. CPC maintains that our decision contained an error of fact relating to the actions of a USDA employee that bears directly on the outcome of our decision.

We affirm the dismissal.

The RFP was a small business set-aside, but also permitted participation by organizations for the disabled. Firms that were competing as organizations for the disabled were required, among other things, to use disabled employees for at least 75 percent of the work force performing the contract. CPC alleged in its protest that Fairfax, an organization for the disabled, would be unable to meet this requirement because the RFP required the contractor to offer USDA employees currently performing the work a right of first refusal for employment as contractor employees. We dismissed this issue as academic because, during the pendency of the initial protest, the agency advised our Office that the affected USDA employees had already refused employment offers from Fairfax; the firm thus was free to use disabled employees for as much as 100 percent of the contract requirement.

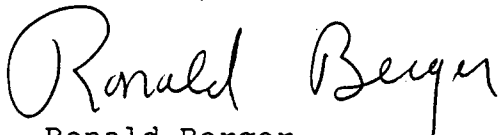
In its request for reconsideration, CPC maintains that we erred in dismissing this aspect of its protest. According to the protester, the USDA employees at issue in fact had not responded to offers of employment from Fairfax; our decision therefore was based on a material error of fact. The protester maintains that if these USDA employees decide to accept employment offers from Fairfax, the firm will be unable to meet the requirement to use disabled employees for

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at least 75 percent of the work force. In support of its allegation, CPC has submitted an affidavit executed by an alleged USDA employee who has not responded to Fairfax's offer of employment.

CPC's position is without merit because the affidavit submitted by CPC shows on its face that the individual who executed it is not a USDA employee but, rather, an employee of a private concern known as Potomac Personnel. The individual in question was formerly a USDA employee, but the record shows that he voluntarily terminated his employment with the agency on January 6, 1995, prior to the date of our original decision. Our dismissal was based on information from the agency that all USDA employees had refused Fairfax's offers of employment. Since the individual on whose affidavit CPC's argument is founded was no longer a USDA employee at the time of our decision, CPC's evidence does not show that the basis for our decision was erroneous. CPC's request thus provides no basis for overturning the dismissal. See 4 C.F.R. § 21.12(a) (1995).

The decision is affirmed.


Ronald Berger
Associate General Counsel